

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CORPORATION OF THE CATHOLIC
ARCHBISHOP OF SEATTLE,

Plaintiff,

v.
ARROWOOD INDEMNITY
COMPANY, et al.,

Defendants.

CASE NO. C15-175 MJP

ORDER ON DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

THIS MATTER comes before the Court on Defendants' Motion for Summary Judgment.

(Dkt. No. 9.) Having considered the Parties' briefing and all related papers, the Court GRANTS Defendants' Motion as to all of Plaintiff's claims and GRANTS in part and DENIES in part the Motion as to Defendants' counterclaims.

Background

Plaintiff Corporation of the Catholic Archbishop of Seattle ("the Archdiocese") brings this declaratory judgment action against Defendants Arrowood Indemnity Company and Royal-Globe Indemnity Insurance Companies asserting that it is entitled to coverage for a damages

1 claim made against it by D.B. (Dkt. No. 1-2.) Plaintiff asserts that under the applicable
2 insurance policy or policies, Defendants had a duty to defend and indemnify Plaintiff against
3 D.B.’s claim that Father John Marsh sexually abused him as a child at St. Matthew’s Parish in
4 Seattle sometime between 1964 and 1966. (*Id.*) Plaintiff asserts that Defendants breached their
5 duties under the applicable policy, and also brings claims for bad faith and violations of the
6 Washington Insurance Fair Conduct Act and the Washington Consumer Protection Act. (*Id.*)

7 Defendants deny Plaintiff's allegations and assert counterclaims for declaratory relief that
8 the Archdiocese cannot prove the existence or material terms of any applicable insurance policy,
9 and that Defendants had no duty to defend or indemnify the Archdiocese for D.B.'s allegations
10 under any purportedly applicable policy. (Dkt. No. 4.)

11 Defendants now move for summary judgment on all of Plaintiff's claims, as well as on
12 their two counterclaims, arguing (1) that Plaintiff cannot prove the existence or material terms of
13 the alleged insurance policy or policies, (2) that there can be no duty to defend because no "suit"
14 was ever filed against the Archdiocese, and (3) that D.B.'s claim included only allegations of
15 intentional conduct, and therefore the claim contained no allegation of an "occurrence" that
16 could potentially be covered under any allegedly applicable insurance policy. (Dkt. No. 9.)
17 Plaintiff opposes the motion. (Dkt. No. 24.)

Discussion

I. Legal Standard

A. Summary Judgment

21 Summary judgment is proper where “the movant shows that there is no genuine issue as
22 to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
23 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue
24 of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In assessing whether a party has met

1 its burden, the underlying evidence must be viewed in the light most favorable to the non-
 2 moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

3 II. No Duty to Defend or Indemnify

4 The Court finds that genuine issues of material fact preclude summary judgment as to the
 5 existence of the insurance policy. Plaintiff has produced sufficient evidence that an insurance
 6 policy was issued and contained certain terms to foreclose summary judgment on that basis.
 7 (See Dkt. Nos. 10, 20, 21, 22, 23.)

8 While Defendants are not entitled to summary judgment on the basis that the Archdiocese
 9 cannot prove the existence or terms of an applicable insurance policy, the Court finds that
 10 Defendants are nevertheless entitled to summary judgment on Plaintiff's claims because there
 11 was no duty to defend or to indemnify Plaintiff as to D.B.'s allegations under the policy language
 12 put forward by the Archdiocese. Viewing the facts in the light most favorable to Plaintiff,
 13 Defendants are entitled to summary judgment because the Archdiocese's policy language does
 14 not establish potential coverage for the intentional sexual abuse of a child.

15 The Parties agree that, assuming the existence of a policy, the applicable language limits
 16 coverage to damages caused by an "occurrence," and that "occurrence" is defined by the policy
 17 to mean an "accident." (Dkt. Nos. 9 at 17, 24 at 14-15, 25 at 14-15.) Under Washington law, an
 18 accident is an unusual, unexpected, and unforeseen happening; an accident is never present when
 19 a deliberate act is performed unless some additional unexpected, independent and unforeseen
 20 happening occurs which produces or brings about the result of injury or death. Pac. Ins. Co. v.
 21 Catholic Bishop of Spokane, 450 F. Supp. 2d 1186, 1198 (E.D. Wash. 2006) (citing Grange Ins.
 22 Co. v. Brosseau, 113 Wn.2d 91, 95 (1989)). The means as well as the result must be unforeseen,
 23 involuntary, unexpected and unusual. Id. Consequently, Washington courts hold that sexual
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1 abuse and sexual assault are not accidents, and will infer the intent to inflict harm as a matter of
 2 law, regardless of the abuser's actual subjective intent. See Catholic Bishop of Spokane, 450 F.
 3 Supp. 2d at 1198-99 (collecting cases). Therefore, a claim consisting of allegations of the
 4 intentional sexual abuse of a child is clearly not covered under the allegedly applicable policy
 5 put forward by the Archdiocese, and Defendants' duty to defend was not triggered. See Woo v.
 6 Fireman's Fund Ins. Co., 161 Wn.2d 43, 52-53 (2007).

7 Plaintiff argues that because "occurrence" is defined to mean "an accident . . . neither
 8 expected nor intended from the standpoint of the insured," coverage is not precluded because the
 9 Archdiocese itself, as the insured, did not commit any intentional wrongful act and therefore the
 10 abuse was an "accident" from the Archdiocese's perspective. (Dkt. No. 24 at 15.) This
 11 argument is unavailing. The claim made against the Archdiocese was for vicarious liability for
 12 Father Marsh's intentional sexual abuse. (Dkt. Nos. 1-2, 10, 10-6, 21-1.) No claim was made by
 13 D.B. against the Archdiocese for negligent supervision, negligent hiring, or any other type of
 14 independent negligence by the Archdiocese. (Id.) Intentional sexual abuse, as opposed to
 15 negligent supervision, does not constitute an "occurrence" because it is not accidental.

16 Plaintiff argues that even if D.B.'s allegations did not present a covered claim, they at
 17 least presented a potentially covered claim because, had the dispute progressed to litigation, D.B.
 18 likely would have included numerous theories of liability beyond vicarious liability, including
 19 negligence by the Archdiocese. (Dkt. No. 24 at 14-15.) Plaintiff argues that although no
 20 complaint had been filed, Defendants' failure to give the Archdiocese the benefit of the doubt
 21 when making its pre-litigation defense decision constitutes bad faith as a matter of law and
 22 triggers coverage by estoppel. (Id.) The Court disagrees. If and when additional claims were
 23 asserted against the Archdiocese, and if and when additional facts supporting potential
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1 negligence liability were put forward, the duty to defend would be triggered. However,
2 Defendants' decision not to defend a claim of intentional sexual abuse, at the time it was made,
3 was reasonable because as discussed above, the intentional sexual abuse of a child is not an
4 "accident" under Washington law and there was no potential for coverage of D.B.'s claim as
5 stated. Plaintiff's evidence does not establish that the duty to defend was triggered or that
6 Defendants failed to conduct a reasonable investigation into the existence of applicable policies.

7 Having found that D.B.'s allegations of intentional sexual abuse were not potentially
8 covered under any applicable insurance policy and that no duty to defend was triggered, the
9 Court does not reach Defendants' argument that the duty to defend was not triggered because no
10 "suit" was filed against the Archdiocese within the meaning of the policy. The Court GRANTS
11 Defendants' motion for summary judgment as to all of Plaintiff's claims, as well as on
12 Defendants' counterclaim as to the duty to defend and indemnify. However, because the
13 Archdiocese has presented sufficient evidence for a reasonable fact finder to conclude that an
14 insurance policy existed, and what the material terms of that policy were, the Court DENIES
15 Defendants' motion for summary judgment on their counterclaim as to the existence of an
16 applicable insurance policy.

17 **Conclusion**

18 The Court GRANTS Defendants' motion for summary judgment on all of Plaintiff's
19 claims because D.B.'s allegations of the intentional sexual abuse of a child did not present a
20 potentially covered claim, and therefore did not give rise to a duty to defend or indemnify. The
21 Court DENIES Defendants' motion for summary judgment as to the existence of an applicable
22 insurance policy because Plaintiff has introduced sufficient evidence to create a genuine issue of
23 material fact. The Court ORDERS Defendants to advise the Court in writing within ten (10)
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1 days of the date of this order whether Defendants' remaining counterclaim concerning the
2 existence of an applicable policy is now moot and judgment should be entered, or whether the
3 case will proceed to trial on the remaining counterclaim.

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5 The clerk is ordered to provide copies of this order to all counsel.

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7 Dated this 8th day of December, 2015.

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Marsha J. Pechman
Chief United States District Judge